FILED
JUN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff-Appellee,

vs.

BOARD OF REVIEW OF THE CITY OF SIOUX CITY, IOWA; and E. H. SCHILL, Chairman Thereof,

Defendants-Appellants.

Filed June 30, 1981

1-80
2-65366

Appeal from Woodbury District Court - David J. Blair, Judge.

Defendant appeals from district court's judgment reducing defendant's valuation of plaintiff's property asserting 1) that district court erred in finding the assessed valuation of plaintiff's property, 2) that district court improperly relied primarily on the market data or income data approach in reaching its valuation of plaintiff's property, 3) that the only proper method of determining the fair market value of plaintiff's property was the cost approach, the primary method used by defendant, and 4) that plaintiff's property should be valued on the basis of its current usage as a home office for plaintiff's business rather than as a general office building. AFFIRMED.

James L. Abshier and Michael S. Walsh, Sioux City, Iowa, for defendants-appellants.

George Madsen and Charles R. Wolle of Shull, Marshall & Marks, Sioux City, Iowa, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Board of Review, appeals from district court's judgment reducing defendant's 1978 and 1979 valuation of plaintiff Home Federal Savings and Loan Association's property. Defendant asserts 1) that district court erred in finding the assessed valuation of plaintiff's property on January 1, 1978, and January 1, 1979, was $1,600,000, 2) that district court improperly relied primarily on the market data or income data approach in reaching its valuation of plaintiff's property, 3) that the only proper method of determining the fair market value of plaintiff's property was the cost approach, the primary method used by defendant, and 4) that plaintiff's property should be valued on the basis of its current usage as a home office for plaintiff's business rather than as a general office building. We affirm.

Following the city assessor's January 1, 1978, and January 1, 1979, valuation of the plaintiff's property at $3,566,131, plaintiff filed a protest against the valuation with defendant. Defendant reduced the valuation to $2,855,268. Plaintiff thereafter appealed to district court which, following an evidentiary trial, found the valuation of plaintiff's property to be $1,600,000. Defendant's appeal followed.

I. General Principles. A taxpayer protesting a valuation before the board of review must prove that the valuation is excessive, inadequate, inequitable, or capricious. § 441.21(3), The Code 1981. If the taxpayer introduces competent evidence by at least two disinterested witnesses that the property's market value is less than the market value established by the assessor, the burden of proof shifts to those officials or persons seeking to uphold the assessed valuation. § 441.21(3), The Code 1981; Equitable Life Insurance Company v. Board of Review, 281 N.W.2d 821, 823 (Iowa 1979). District court hears the appeal in equity, where the issues before the board of review are triable **de novo**, § 441.39, The Code 1981. There is no presumption of correctness of the assessment from which an appeal is taken. Id. The court may increase, decrease or affirm the board's determination. § 441.43, The Code 1981. Our review of district court's decree is **de novo**. Equitable, 281 N.W.2d at 823.

II. Valuation Criteria. Section 441.21 requires property to be assessed at its actual value, that is "market value," the fair and reasonable exchange between an informed buyer and an informed seller neither of whom is under any compulsion. § 421.21(1)(b), The Code 1981. Market value is determined 1) by the sales price (market data) approach or, if that value cannot be readily ascertained, 2) by the other factors approach. Id. Other factors include the property's "productive and earning capacity, if

any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement costs, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor." § 441.21(2), The Code 1981.

To utilize the market data approach, plaintiff must show by a preponderance of the evidence that the property has an ascertainable market value, either through available sales prices of the subject property or comparable property in normal transactions. Equitable, 281 N.W.2d at 823. Plaintiff also has the burden of persuasion to prove by a preponderance of the evidence that the other properties are comparable. Bartlett & Company Grain v. Board of Review, 253 N.W.2d 86, 88 (Iowa 1977). If plaintiff establishes comparability then those sales prices and the expert's opinions predicated on such sales prices may be considered. Id.

Defendant argues that it is improper to rely upon either the market data (sales price) approach or the income approach to value plaintiff's property because 1) bank buildings are not bought and sold in the real estate market and 2) banks always own the building in which they are housed, making it impossible to ascertain a fair rental figure. Thus, defendant asserts, the only proper method to determine the fair market value of plaintiff's building is the cost approach.

III. Evidence of Value. We begin our analysis by detailing the various appraisals.

	Method of Appraisal			
Plaintiff's Witnesses:	Market	Income	Cost	Final
Wilson	$2,450,000	$1,750,000	$3,003,708	$1,900,000
LeGrand	$1,650,000	$1,590,000	$3,310,000	$1,600,000
Nutt	$1,500,000		$2,300,000	$1,500,000
Defendant's Witnesses:				
Visser		$2,944,000	$2,855,000	$2,855,000
Reed	(not asked to give appraisal)			
Zarr	(not asked to give appraisal)			

Neither party asserts that plaintiff's property had an established sales price or that the exchange value of the property could be readily established solely by the market data approach. "However, if even one comparable sale exists, it should be considered in using the other factors approach." Equitable, 281 N.W.2d at 825. From our review of the record, we conclude that plaintiff's witnesses selected office buildings sufficiently similar in use and occupancy, taking into account appropriate adjustments for individual characteristics, conditions and location, to permit consideration of their

sales price in ascertaining the gross income multiplier, which in turn resulted in an estimated value for the subject property.

We further reject defendant's assertion that the income approach is impermissible because no accurate rental data was available. While we agree that the record is devoid of evidence establishing rents paid by banks in leasing space to be used as a main bank facility, we cannot agree with defendant's claim that plaintiff's witnesses' testimony as to rental value is thereby speculative. Plaintiff's witnesses, Wilson and LeGrand, carefully analyzed leases both for the subject property and other downtown properties to ascertain comparable rental values for tenant-occupied space.

The only real dispute involves the rental value to be assigned to the approximately thirty-eight percent of the space occupied by plaintiff itself. In this regard, plaintiff's independent witnesses, without joint consultation, each arrived at a rental value of $12.00 per square foot. Witness Wilson stated he could not find a similar rental value to utilize directly, so he considered the fact that the tenant-occupied space resulted in a rental value of $9.50 per square foot and that the first floor space occupied by plaintiff was more desirable. From these he concluded that $12.00 per square foot was a reasonable figure to attribute to the space occupied by plaintiff since it was fifty to seventy-five cents per square foot per year higher than any rental he could find at the time.

Witness LeGrand extensively studied rental values in downtown Sioux City and found the subject property's rate to be the highest at $9.50 per square foot. He further determined that the value of the owner-occupied portion (excluding the basement) should be increased by twenty-five per cent ($12.00 per square foot) due to its first floor location, superior exposure, and quality of finish.

While we agree that each witness utilized his own judgment to determine the rental value of the space occupied by plaintiff, we believe the witnesses had sufficient reliable data with which to reach such a judgment.

Having determined that evidence of the market data and income approach can be considered, we also have addressed and rejected defendant's argument that the only proper method of valuation of the subject property is the cost approach. While defendant asserts that this approach resulted in three appraisals that are nearly equal, thus indicting the speculative or judgment factors involved in using the other methods, plaintiff's witnesses each testified to the problems involved with using the cost approach in the instant case. Wilson testified that replacement cost would be so

excessive in relation to any value to a buyer that the property would not be constructed in a manner similar to its original construction in 1963. LeGrand testified that the cost approach required him to make too many assumptions, e.g., value of land, depreciation, obsolescence, and that he thus accorded less weight to this appraoch.

Defendant finally contends that plaintiff's witnesses erroneously valued the property as if it were a typical office building and failed to consider the present use of the property as the home office of a savings and loan bank specially designed and built for that purpose. We do not agree. Plaintiff's witnesses testified that the building was designed to produce income, that the elaborate quality of the construction was superfluous, if not detrimental, to that goal, and that the first floor space occupied by plaintiff could easily be converted to general-use space. This evidence belies defendant's assertion that the property would or should only be considered suitable for occupancy by another bank as a home office facility, and is further strengthened by defendant's own argument that there is no prospective buyer since banks are never bought and sold.

In summary, we find that plaintiff introduced evidence of two qualified, disinterested witnesses that the exchange value of its property was less than defendant's appraisal. Defendant's witness, on the other hand, contrary to the requirements of the statute, essentially utilized one method of valuation. We thus conclude defendant failed to sustain its burden that the fair market value of the property was $2,855,000. Having fully considered the valuation under all three methods, we believe district court correctly valued plaintiff's property at $1,600,000 and therefore affirm its judgment.

AFFIRMED.